

February 5, 2010

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Ex Parte Notice**

**WT Docket No. 04-356, 06-150 and 07-195**  
**PS Docket No. 06-229,**  
**GN Docket Nos. 09-47, 09-51, 09-137, and 09-157**

Dear Ms Dortch:

On February 4, 2010, Thomas Sugrue, Kathleen Ham, and Patrick Welsh of T-Mobile USA ("T-Mobile") and the undersigned met with Blair Levin, Executive Director, Omnibus Broadband Initiative and Elvis Stumbergs, Attorney-Advisor to the National Broadband Taskforce, regarding the above-captioned proceedings.

Consistent with its comments in NBP Public Notice #6, the T-Mobile participants argued that the highest and best use of the AWS-3 band would be to pair it with at least 25 MHz of contiguous spectrum located in the 1755-1810 MHz government band, and that to this end, the Commission and NTIA should work together to reallocate this spectrum for commercial use and auction it within the next two to three years. We noted that M2Z's proposed use for the AWS-3 band was seriously flawed and would not best serve the public, for the reasons set out in the attached slide deck. Additionally, the T-Mobile participants explained why auctioning the D block for commercial use would promote wireless broadband competition. They also described a public/private partnership that would provide public safety entities with multiple options and partners to develop a nationwide wireless broadband network, while ensuring the commercial viability of the D block. T-Mobile's D block proposal is summarized in the attached slides.

Pursuant to section 1.1206(b) of the Commission's rules, an electronic copy of this letter and attachment is being filed electronically with the Office of the Secretary for inclusion in the above-referenced dockets and served electronically on the Commission participants in the meeting.

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

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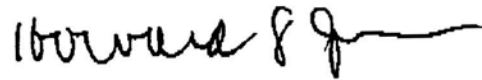
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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Please direct any questions regarding this filing to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard J. Symons", with a long horizontal flourish extending to the right.

Howard J. Symons

cc: Blair Levin  
Elvis Stumbergs

# Meeting with FCC Broadband Task Force

February 4, 2010

# Tailoring Service Rules to Single Business Plan Will Preclude Competitive Auction

- Proposed rules closely track M2Z's business plan
- When the Commission tailors an auction to the business plan of a single company, there is little if any competition for the spectrum
  - 1670-1675 MHz Band
    - Only two qualified bidders
    - Only a single bid
    - No commercial service
  - D Block
    - Only one bidder
    - Reserve price not reached
    - License unassigned

# Preventing a \$3 Billion Auction Windfall

## Encumbered Auction

- M2Z plans have valued AWS-3 spectrum at \$50 million.
- No enforcement mechanisms in pending proposals that carry penalties if free broadband conditions are not met.
- No requirement of surety to deter spectrum speculation.

**\* Source: e.g., The Brattle Group, LSI Presentation 9/18/08.**

## Fully Competitive Auction

- Economists value this 20 MHz of AWS-3 spectrum at \$3 billion, were it to be auctioned without restrictions. \*
- Estimate is based on 700 MHz E-Block, AWS-1 prices.
- Eliminating special conditions would maximize competition, ensure rules not tailored to one firm's business model.
- Would eliminate unnecessary litigation liability, revenue risk to the U.S. government.

***Bottom Line: The AWS-3 proposal would result in an auction windfall that would subsidize the business plan of a new start-up at a \$3 billion cost to taxpayers.***

# M2Z's Promises Are Illusory

- “Free broadband” is not free and not broadband
- Requires purchase of PC/laptop + \$250 network device
- 768 kbps is hardly broadband today; it is “already *below* the lowest available speed offered by commercial cable modem providers.”

Free Press Comments, WC Docket No. 05-337, at 23 (filed November 26, 2008)  
(emphasis in original)
- By 2013, 768 kbps will be the equivalent of dial-up service
- In this financial climate, it is unrealistic to think that M2Z could obtain the \$43 billion estimated to build and operate a new national network
- Broadband access for low-income people can be addressed more directly through the Lifeline program
  - T-Mobile and CTIA support expanding Lifeline program to include broadband service
- Promise of service for rural America is illusory – build-out to cover 95% of the population would cover only 40% of geography

# Free “Broadband” Falls Far Short of Currently Available Broadband Offerings

	Downstream Speed	Technology
<b>FNPRM “Free Broadband”</b>	<b>768 kbps</b>	<b>WiMAX</b>
<b>3.5 G Wireless</b>	<b>Up to 7.2 Mbps</b>	<b>HSPA</b>
<b>Wi-Fi Hotspots</b>	<b>11 Mbps</b>	<b>802.11b</b>
<b>Digital Subscriber Link</b>	<b>768 kbps to 6 + Mbps</b>	<b>ADSL</b>
<b>FiOS</b>	<b>10 Mbps to 50 Mbps</b>	<b>Fiber optic cable</b>
<b>Cable Modem</b>	<b>6 Mbps to 50 Mbps</b>	<b>Hybrid Fiber Coax (HFC)</b>

# What People Are Saying About M2Z's Business Plan and the Proposed AWS-3 Rules

## ▪ **No Financing for Nationwide AWS-3 Start-up**

- “Given the dislocation in the credit markets, it remains to be seen what entity would be able to raise the capital required to build a nationwide wireless network, with the provision of free service as part of the business plan.” UBS Investment Research
- “If you're looking at start-ups and new entrants to come in this space, boy, that seems like a tall order to me under current finance conditions.” Former FCC Chairman Michael Powell
- “For a new player, you basically have to have all your capital up front.” New America Foundation

## ▪ **Free Service Would Be Poor Quality and Deter Broadband Deployment**

- “Chairman Kevin Martin is trying to saddle lower income and communities of color with slow, low-quality Internet technology with their AWS-3 scheme.” Black Leadership Forum
- “Everybody likes the concept -- free broadband, free access to the Internet -- but in practice, the way the model is set up, it may present problems.” Free Press
- “The FCC should scrap its scheme to give away \$2 billion of radio spectrum assets to billionaire venture capitalists at the expense of rural, urban, and low-wealth communities of color.” Black Leadership Forum
- “The plan will hamper broadband deployment by destabilizing the marketplace and deterring investment in rural broadband deployment.” Rural Telecommunications Group
- “Rather than foster universal broadband service, the FCC AWS-3 plan will discourage it.” Rural Telecommunications Group



# What People Are Saying About M2Z's and the Proposed AWS-3 Rules (continued)

## ▪ **Interference Harms Consumers**

- Harmful interference “would potentially be magnified to those wireless customers using hearing-aid compatible handsets with their hearing aids or cochlear implants.” Hearing Loss Association of America
- “Wireless consumers cannot be in a position in which the most important calls they make, 9-1-1 calls, are disrupted or blocked.” National Emergency Number Association

## ▪ **Free Market Principles Should Guide FCC**

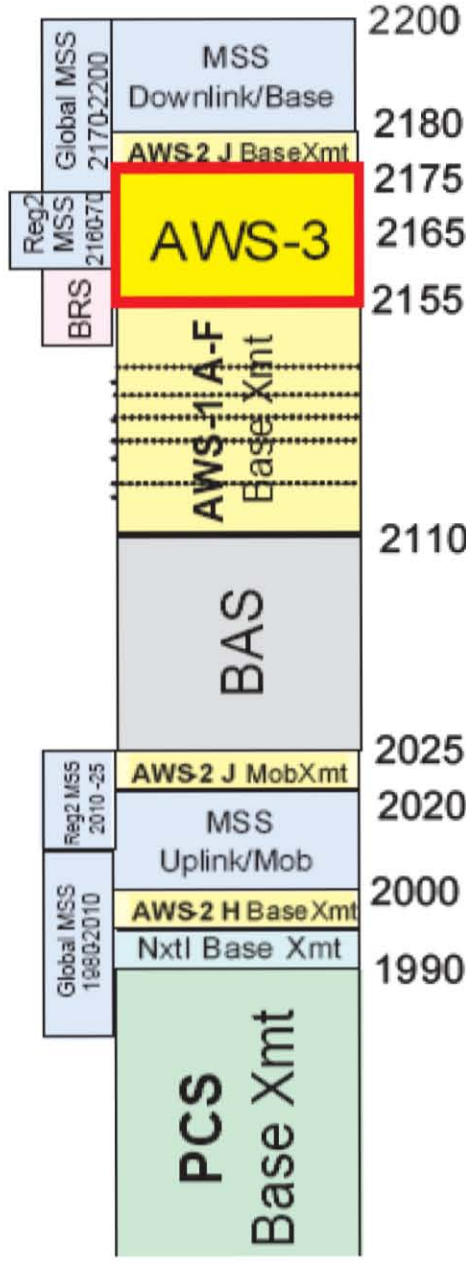
- “The FCC’s proposal ... run[s] counter to the free market principles that have so successfully guided the wireless and broadband industries to date.” U.S. Chamber of Commerce
- “The FCC should not engage in ‘designer allocations,’ crafting rules to require or benefit one specific business model of the FCC’s choosing.” Rural Telecommunications Group
- “The FCC should not be in the business of picking winners and losers or of regulating the success of one business plan over another.” Rural Telecommunications Group

## ▪ **Proposed Rules Have a Disastrous Economic Impact**

- “The unencumbered license would be worth approximately \$3 billion at auction.” Dr. George S. Ford, Phoenix Center
- “M2Z’s proposal would likely do more harm than good by slowing the pace of future innovation among broadband access providers, and by costing American taxpayers billions of dollars in lost auction revenue.” Criterion Economics, L.L.C.
- “The economic costs of M2Z’s proposal, in terms of losses in both static efficiency and dynamic efficiency, are real and likely to be sizeable.” Criterion Economics, L.L.C.

# Broadband Maximization Plan

- Asymmetrical pairing of AWS-3 downlink with J Block



- The AWS-3 downlink could be paired with J Block uplink/downlink
- Eliminates TDD adjacent to AWS-1 FDD, along with associated interference
- More efficient because it avoids the need for guard bands
- Facilitates bi-directional use of the new bands at higher speeds
- Allows new entrants, including M2Z, to bid

## **Broadband Maximization Plan: More Efficient; No Interference**

- Enables faster and more robust broadband service than under any other proposal in the record
- Allows new entrants to provide wireless broadband services using a variety of technologies, including WiMAX
- Increases spectral efficiency by as much as 40 percent by eliminating the need for guard bands or strict technical limitations
- Does not preclude the Commission from imposing conditions on the licensee(s), including requiring the provision of free service
- Cures the significant interference problems in the adjacent AWS-1 and MSS spectrum



# D Block Appeal to T-Mobile

- T-Mobile currently has no lower band spectrum
- 700 MHz and 850 MHz bands are dominated by the “Big 2”
- 700 MHz spectrum would enable:
  - Improved suburban in-home coverage
  - Extended outdoor footprint
  - Entry into underserved rural areas
  - Leveraged development of a 700 MHz ecosystem
  - Key plank in transition to LTE

# D Block

- Framework

1. Auction for commercial use
2. Support legislation directing auction proceeds toward funding development of nationwide, interoperable broadband public safety network
3. D Block licensee(s) must deploy devices that tune across the 700 MHz band
4. The build-out requirements same as Upper 700 MHz – population-based, with signal coverage to at least 40% of the population within 4 years and at least 75% of the population within 10 years of the license term
5. D Block licensee(s) and PS to work together to develop and implement interoperability standards

- Options

1. To insure interoperability, may be necessary to impose technology standard on D Block (i.e., LTE) – T-Mobile would do LTE
2. To ensure that at least one carrier offers Priority Access, may be necessary to impose requirement on D Block
3. Nationwide license for D Block preferred, but licenses based on smaller areas (e.g., REAGs, MEAs, the 55 public safety regional planning committee areas) also acceptable. In the latter case, combinatorial bidding would improve the efficiency and equity of the auction

# Public/Private Partnership for Public Safety Broadband Access

- Framework
  1. Provide PS with multiple options and partners to develop a nationwide wireless broadband network, while ensuring the commercial viability of the D block. PS could:
    - Build out a PS network using its existing 10 MHz of broadband spectrum
    - Lease some or all of its 10 MHz to a commercial operator in return for access to commercial networks
    - Share networks with commercial operators in 700 MHz band
  2. PPP not limited to D Block licensee(s)
  3. PS agencies allowed to use new or existing grant programs for funds
  4. PS could work with commercial providers to develop and implement interoperability standards
  5. PS could negotiate priority access to commercial networks in times of emergency (similar to existing WPA for voice)
  6. PS devices required to tune across the 700 MHz band, including the D block, to enable roaming
- Options
  1. To insure interoperability, may be necessary to impose technology standard on 700 MHz PS systems (i.e., LTE)
  2. To ensure efficient use of spectrum, FCC should consider establishing transition of 14 MHz narrowband (12 MHz + 2 MHz guard band) to broadband use over time. Voice traffic could ride on top of broadband platform